

Proposed Order Relating to Completion of Service

Attachment H – Notice of Lawsuit and Request for Waiver of Personal Service of Notice in Lieu of Summons

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**NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF PERSONAL SERVICE OF
NOTICE IN LIEU OF SUMMONS**

To: _____ (As _____ of
_____)

You have been named as a Defendant in a civil action. A Notice of Motion and Motion for Intervention, Proposed Petition to Intervene, Amended Complaint-in-Intervention, and a Motion for Preliminary Injunction by Mineral County, Nevada, all claiming a right to a minimum level of water for Walker Lake (“Intervention Documents”), which may affect the water rights that you (or the entity on whose behalf you are addressed) claim under the Walker River Decree, have been filed in the United States District Court for the District of Nevada, Reno, Nevada, Case No. C-125. This matter has been assigned Subfile No. C-125-C, docket number 3:73-cv-0128-RCJ-WGC.

Rule 4 of the Federal Rules of Civil Procedure provides that under certain circumstances you can avoid being assessed the cost of being personally served if you sign a waiver and accept service by mail. The materials that have been sent to you in this package include a waiver form, instructions, and a self-addressed, stamped envelope for returning the waiver form. There are also other documents enclosed that address the sale or other conveyance of your water rights or if you believe that you should not be a party to this lawsuit. Please read these materials carefully, as they are important to your legal rights.

Enclosed are the following eleven (11) documents:

1. **Waiver of Personal Service of Notice in Lieu of Summons:** Two copies of this document are enclosed, one for your records and one that you may send in the

enclosed stamped and addressed envelope to Simeon Herskovits, the attorney for Mineral County, if you choose to execute the document.

2. **Order Relating to the Completion of Service;**
3. **Notice of Appearance and Intent to Participate Form.** If you choose to sign this document, you **must** file the original with the District Court and you **must** send a copy of the document to the parties listed on the Notice of Appearance and Intent to Participate Certificate of Service;
4. **Disclaimer of Interest in Water Rights and Notice of Related Information and Documentation Supporting Disclaimer Form**
5. **Joint Motion for Substitution of Parties Following Transfer of Interest Form;**
6. **Statement Noting Death Form.**
7. **Mineral County's Notice of Motion and Motion for Intervention** (October 25, 1994).
8. **Mineral County's Proposed Petition to Intervene, Memorandum of Points and Authorities, and Supporting Affidavits of Kelvin F. Buchanan, Herman F. Staat, Marlene Bunch, and Louis Thompson** (October 25, 1994).
9. **Mineral County's Amended Complaint in Intervention** (March 10, 1995).
10. **Mineral County's Amended Memorandum of Points and Authorities in Support of Mineral County's Amended Complaint in Intervention** (March 10, 1995).
11. **Mineral County's Motion for Preliminary Injunction and Memorandum of Points and Authorities and supporting affidavits** (March 10, 1995).

This is not a formal notification from the Court, but rather a request by Counsel for

Mineral County that you sign and return the enclosed WAIVER OF PERSONAL

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SERVICE OF NOTICE IN LIEU OF SUMMONS in order to save the cost of serving you with a Judicial Notice in Lieu of Summons, and additional copies of the Notice of Motion and Motion to Intervene, Proposed Petition to Intervene, Amended Complaint in Intervention and Memorandum of Points and Authorities in Support of Amended Complaint in Intervention, Motion for Preliminary Injunction, and related forms referenced above. If you do not send a signed copy of the waiver to Mineral County within thirty (30) days after the date designated below as the date on which this Notice and request is sent, you may be liable for the cost of personally serving you. We enclose a self-addressed, stamped envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the Court and no additional copies of the above-referenced documents will be served on you. The matter will then proceed as provided in paragraph 2 of the Order Relating to Completion of Service, which is included with this notice.

If you return the signed WAIVER OF PERSONAL SERVICE OF NOTICE IN LIEU OF SUMMONS, you are not obligated to respond to any of Mineral County's Intervention Documents, except upon further order of the Court. However IF YOU WISH TO PARTICPATE IN THIS CASE, you are required, within thirty (30) days of your execution of the WAIVER OF PERSONAL SERVICE OF NOTICE IN LIEU OF SUMMONS, to file and serve a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE with the Court and mail a copy of the notice to the parties listed on the NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE form. As noted above, a

1 copy of a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE form that you may
2 choose to use is attached.

3 **If you do not return the signed WAIVER OF PERSONAL SERVICE OF NOTICE**
4 **IN LIEU OF SUMMONS within the time indicated, we will take appropriate steps to effect**
5 **formal service in a manner authorized by the Federal Rules of Civil Procedure and will**
6 **then, to the extent authorized by those Rules, ask the Court to require you (or the party on**
7 **whose behalf you are addressed) to pay the full cost of such service. In that connection,**
8 **please read the statement concerning the duty of the parties to waive service of the notice in**
9 **lieu of summons, which is attached hereto.**

11 **The Order Relating to Completion of Service requires you to notify the Court and**
12 **Mineral County within thirty (30) days of being served if you contend that you have been**
13 **included in this litigation in error because at the time you were served, you claimed no**
14 **water right under the Walker River Decree. If you contend that you have been included in**
15 **this litigation in error, the Order Relating to Completion of Service also requires you to provide**
16 **certain information and documents related to the transfer of water rights that would be part of**
17 **this litigation. If you disclaim any water right in this litigation, you must comply with the Order**
18 **Relating to Completion of Service and you may use the form entitled DISCLAIMER OF**
19 **INTEREST IN WATER RIGHTS AND NOTICE OF RELATED INFORMATION AND**
20 **DOCUMENTATION SUPPORTING DISCLAIMER, which is attached to the Order Relating to**
21 **Completion of Service and included herein.**

24 The Order Relating to Completion of Service also provides that if, during the course of
25 this litigation, you sell or otherwise convey ownership of all or a portion of any water right under

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28 of Summons
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1 the Walker River Decree, you may use the JOINT MOTION FOR SUBSTITUTION OF
2 PARTIES FOLLOWING TRANSFER OF INTEREST FORM, which is attached to the Order
3 Relating to Completion of Service and included herein, to substitute your successor(s)-in-
4 interest. You should retain this Order and the attached form for use whenever appropriate during
5 the course of this litigation. You may also wish to make additional copies of the form attached
6 to the Order for use if you sell or otherwise convey ownership of applicable water rights on more
7 than one occasion during the course of this litigation. Pursuant to the Order Relating to
8 Completion of Service and other orders of the Court, even if a successor-in-interest is not
9 substituted, the successor will nonetheless be bound by the final decision of the Court.
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11 The STATEMENT NOTING DEATH form, which is attached to the Order Relating to
12 Completion of Service and included herein, is for use by heirs or successors-in-interest should
13 the named Defendant die during the course of litigation. The contact information for the heir or
14 successor must be included on this form. When a Statement Noting Death is filed with the
15 Court, it must also be served on all parties listed on the form and filed with the Court. After a
16 Statement Noting Death is filed and served, any party to the case may move to substitute the
17 proper successor-in-interest to the deceased Defendant. Pursuant to the Order Relating to
18 Completion of Service and other orders of the Court, if no suggestion of death is filed, even if a
19 successor-in-interest is not substituted, the successor will nonetheless be bound by the final
20 decision of the Court.
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I affirm that this request is being sent to you on behalf of the proposed Plaintiff-
Intervenor, Mineral County, Nevada, on this _____ day of _____, 2012.

Simeon Herskovits
Advocates for Community and Environment
P.O. Box 1075
El Prado, NM 87529
Attorney for Mineral County

**DUTY TO AVOID UNNECESSARY COSTS OF
SERVICE OF SUMMONS AND OTHER DOCUMENTS**

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the documents as referenced in the notice with which you have been provided. A party located in the United States who, after being notified of this matter and asked by the proposed Plaintiff-Intervenor, Mineral County, Nevada, to waive service of the documents, and fails to do so, will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the Notice of Motion and Motion to Intervene, Proposed Petition to Intervene, Amended Complaint-in-Intervention, or Motion for Preliminary Injunction are unfounded, or that the matter has been brought in an improper place or in a court that lacks jurisdiction over the subject matter thereof or over your person or property. A party who waives service of the documents retains all defenses and objections (except any relating to the service of these documents), and may later object to the jurisdiction of the Court or the place where the matter has been brought.

A party who waives service must enter an appearance pursuant to paragraph 4(d) of the Order Relating to Completion of Service if the party wishes to participate in this case, and if the party fails to do so the party shall nevertheless be deemed to have notice of subsequent orders of the Court and filings of the parties with respect to the Notice of Motion and Motion for Intervention, the Proposed Petition to Intervene, the Amended Complaint-in-Intervention, or the Motion for Preliminary Injunction.